

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Lenel W. Barnes,

Plaintiff,

v.

Case No. 2:21-cv-5

Dr. A. Ayers,

Defendant.

ORDER

This is an action under 42 U.S.C. §1983 filed by Lenel W. Barnes, an Ohio *pro se* inmate, against Dr. A. Ayers. Plaintiff alleged that Dr. Ayers' refusal to test him for the COVID-19 virus has prevented him from transferring to another institution. On January 7, 2021, the magistrate judge filed a report and recommendation on the initial screen of plaintiff's complaint pursuant to 28 U.S.C. §1915A, which requires the court, "in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity," to dismiss a complaint that fails to state a claim upon which relief may be granted. 28 U.S.C. §1915A(a)-(b)(1). The magistrate judge concluded that the complaint failed to allege a claim of medical indifference under the Eighth Amendment, and further noted that an inmate has no constitutional right to be incarcerated in a particular facility. The magistrate judge recommended that the complaint be dismissed for failure to state a claim on which relief may be granted.

The report and recommendation specifically advised the parties that objections to the report and recommendation were due within fourteen days, and that the failure to object to the report and

recommendation would result in a waiver of the right to have the district judge review the report and recommendation *de novo* and a waiver of the right to appeal the decision of the district court adopting the report and recommendation. Doc. 4, p. 8. The time period for filing objections to the report and recommendation has expired, and no objections to the report and recommendation have been filed.

The court agrees with the report and recommendation (Doc. 4), and it is hereby adopted. This action is hereby dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) because plaintiff's complaint fails to state a claim for which relief may be granted. The clerk shall enter judgement dismissing this case.

Date: February 3, 2021

s/James L. Graham  
James L. Graham  
United States District Judge